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File Records

DDA 78-0492/3

10 FEB 1978

NOTE FOR: A/DDCI

FROM : A/DDA

Here is our response to Waller's memo on amended FOIA procedures. We suggest delaying judgment on his recommendation until NFAC has a chance to complete its investigation. (The NIO who released the Nuclear Proliferation document returns from TDY today, 10 February.)

While we are prepared to implement the IG's suggestion for another layer of review we may find that there's another answer. For example, perhaps the IRC should direct that each Directorate and Independent Office give a single senior officer substantive review responsibility, on the model of the [REDACTED] role in the DDO. Then, a new review level in IPS would not be necessary. We still need a sub-IRC to handle policy and procedures matters, however, that group (which Bean's Task Force will recommend be established) could not get deeply involved in the substance of documents reviewed.

STATINTL

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[REDACTED]
Michael J. Malanick

Attachment: a/s

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DDA 78-0492/2

MEMORANDUM FOR: Inspector General

FROM : Acting Deputy Director for Administration

SUBJECT : FOIA Processing

REFERENCE : Memorandum for A/DDA from John H. Waller
dtd 6 February 1978, same subject

1. Reference memorandum makes recommendations for the solution of the problem highlighted by the recent unfortunate release of an intelligence study on nuclear proliferation. We can agree at the outset with the statement that "stricter review and double-check of certain kinds of release under FOIA" are needed. Before commenting on the merits of your recommended solution to the problem, however, we need to address some of the implications of the analysis which leads to your conclusion.

STATINTL

2. The "Investigation of [REDACTED] is cited, and its conclusion "that IPS should use this episode to underline the importance of being finely attuned to press, legal and other pitfalls...." You do not mention and perhaps are unaware that following that investigation a new procedure was established which brings the DDA's Assistant for Information and representatives of OGC and the PAO together in IPS for frequent meetings at which the public relations and legal implications of selected FOIA and Privacy Act correspondence are reviewed. This group does not review all releases, nor was it tasked to do so; it does, however, address the kind of problem represented by the [REDACTED] situation. I think we can agree that the recent case of the NIO document represents a rather different kind of problem.

STATINTL

3. Your memorandum notes that in response to a September 1977 IG recommendation the A/DDCI appointed a task force to review the problem of where the central responsibility "for considering all of the ramifications of significant information releases" should reside, and goes on to conclude that the group "appears to be making little headway." It is true that on the subject of a comprehensive index of released material there is as yet little clear consensus, but on a number of

other issues the task force has reached some useful conclusions which will shortly be reported to the DDCI. Among these is the recommendation for establishment of a sub-IRC working group which could meet regularly to consider policy and procedural matters central to the Agency's FOIA and PA programs. The reestablishment of a referent for alerting management to potential problems (the old [REDACTED] role) will also be recommended.

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4. It is important, we believe, to keep the several kinds of problems we have encountered in the FOIA/PA arena carefully delineated. The [REDACTED] problem arose from a decision about the tactics for handling a difficult request, but did not involve the release of documents. The long-felt need to find ways to link intelligently the responses to requests on similar subjects is again not a problem of document review as much as it is one of analysis of patterns of information flows. The recent episode is in a very real sense a far simpler problem, having to do with effective review of individual documents before release.

STATINTL

5. We have mixed reactions regarding your recommended solution, which would establish another level of review within the IPS. A further review of documents by a fully qualified Agency officer in IPS would provide some additional insurance against an inadvertent release in this flap-prone business, but no system can ever be completely foolproof. Also, how would we provide this added coverage for releases directly from OGC and OLC?

6. Before we undertake to revise the processing procedures in IPS, should we not complete an investigation of the circumstances of this recent "flap"? I understand that the NIO concerned will return today, 10 February, from his TDY and assume that NFAC's inquiry into the matter will shortly be concluded. That inquiry should include not only IPS's role but also the review processes within NFAC. It may well be that we will discover that what was lacking was clear-cut procedural guidance and a hierarchy of substantive review before the document was sent to IPS. (As you know, some components already have a complex review and re-review process. For example, DDO estimates that the average FOIA release is reviewed within DDO at eight separate times. This is a dramatic comparison to this particular case, which may only have been reviewed by one person within an Agency component.)

7. It is clear that we have not solved all the problems encountered in this area of release of information to the public, but even as we criticize we ought not to lose sight of our successes. Thousands of requests have been answered, the large majority without flashback. Our record in court speaks for itself. The problems we have encountered do not fall into a pattern; the [REDACTED] case is as different from the release of raw intelligence on the U.S.S. Liberty as the latter is from the recent release of an inadequately sterilized document. Before we set up new mechanisms, let us be sure we have identified the problem we are trying to solve.

8. We will certainly consider the establishment in IPS of a unit such as you recommend. Perhaps a team of retired annuitants could perform such tasks. We propose to await the outcome of the NFAC investigation of the recent "flap," however, and would like to explore, perhaps through the IRC, improvements in Directorate-level review of documents on route to IPS before we undertake the kind of expansion of IPS which you propose.

/s/ Michael J. Malanick

Michael J. Malanick

STATINTL
AI/DDA [REDACTED]:ydc (10 Feb 78)
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MEMORANDUM FOR: Acting Deputy Director for Administration

FROM: John H. Waller
Inspector General

SUBJECT: FOIA Processing

REFERENCE: IPS Weekly Report (27 January - 3 February),
paragraph 4 (Attached)

1. Action Requested:

It is recommended that you accept and implement the suggestion in paragraph 6 which calls for the assignment to the Information and Privacy Staff of an officer or officers qualified to review significant releases under FOIA which could have security, legal, political or public relations ramifications.

The incident related in reference highlights and exemplifies the problems which can occur if there is not a stricter review and double check of certain kinds of release under FOIA. While the reviewing component clearly made a processing mistake, this mistake could have been caught if the system provided for an adequate review.

2. Background:

In an IG memorandum to the Deputy Director of Central Intelligence, entitled "Investigation of the [REDACTED] Affair," dated 20 October 1976, the IG wrote (paragraph 4): "... even though we recommend no reprimands, we do believe that IPS should use this episode to underline the importance of being finely attuned to press, legal, and other pitfalls, and that within its organization -- despite the heavy workload -- should adopt stricter standards."

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3. In a memorandum from the IG to the Deputy Director of Central Intelligence, entitled "Public Release of Information from CIA," dated 3 June 1977, we concluded and recommended: "a central record of information releases, a central review group

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that would develop release policies and assess damage, development of better guidelines for classification and declassification, relief from the timely response demands of FOIA, and stricter standards for the release of information related to intelligence sources and methods." In this memorandum, we suggested that [REDACTED] Special Assistant to the DDCI, could oversee this review process. This suggestion was adopted. At that time, an IG study on the whole problem had been prepared and was given to [REDACTED] as a guide to him in carrying out his new responsibilities.

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4. On 16 September 1977, the Deputy Inspector General sent a memorandum to the Acting Deputy Director of Central Intelligence, entitled "IG Study of Public Releases of Information from CIA," and recommended that: "the need for improving control and coordination of information releases, along the lines we have recommended in our study, be considered by the EAG." We noted that on the basis of "our recent experience with drug testing files that the Agency still does not have anyone centrally responsible for considering all of the ramifications of significant information releases." The Acting Deputy Director of Central Intelligence, recognizing that [REDACTED] no longer had the responsibilities described in paragraph 3 above and that no central review of the outflow of information was being carried out, appointed a task force to review the problem once again and come up with recommendations.

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5. In reviewing the above, it would seem clear that the Agency has not yet gotten adequate control over the FOIA release problem or the problems presented by other kinds of legal outflow of information. The task force which is studying the problem appears to be making little headway. While [REDACTED] of FOIA states quite frankly in reference that "it would be unwise to rely too heavily upon the (FOIA) Staff to catch reviewers' errors of judgement," it is clear that we must rely on some entity to do so.

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6. I believe this inadequacy must be rectified soonest before other incidents occur and that a responsible reviewing officer or officers, who are attuned to security, legal, political and public affairs needs and qualified to spot potential problems, be appointed to screen significant releases before they are made. I see no reason why such officers could not be located within the Information and Privacy Staff office. Perhaps experienced, senior retired annuitants could be used as FOIA senior review officers.

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[REDACTED]
John H. Waller

Attachment - 1

cc: Chief, Information and Privacy Staff w/att
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